IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

ORDER.

The State Bank of Bikaner & Jaipur & anr.	vs.	Bhagwati Prasad Sharma & ors.

S.B.Civil Revision Petition No.173/2004 against the judgment and decree dated 14.8.2002 passed by the Addl. District Judge No.2, Sriganganagar camp Suratgarh in CAD No.1/2002..

Date of Order: December 11th ,2004.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. G.K. Garg, Sr. Advocate assisted by Mr. S.S. Purohit for the petitioner.

REPORTABLE

BY THE COURT:

This revision petition is by the tenant-defendant-petitioner against the judgment and decree of the first appellate court dated 14.8.2002 by which the first appellate court, upheld the judgment and decree of the trial court dated 27.2.2002 by which the trial court determined the standard rent for the disputed rented premises. The trial court vide judgment and decree dated 27.2.2002, decreed the suit of the plaintiff and fixed the standard rent for the premises as under:-

(1) From 31.5.1976 to 31.5.1981 @ Rs.2500/- per month
(2) From 1.6.1981 to 31.5.1986 @ Rs.2 per sq.ft.
(3) From 1.6.1986 to 31.5.1991 @ Rs.3 per sq.ft.
(4) From 1.6.1991 to 31.5.1996 @ Rs.4 per sq.ft.
(5) From 1.1.1996 to 31.5.2001 (the day on which the possession was handed over by the tenant-petitioner to the landlord respondent no.1) @ 5 per sq.ft.

2. The court held that total area let out to the defendant is 3104 sq.ft. The trial court also awarded interest over the arrears of rent @ 6% per annum.

3. Brief facts of the case are that the plaintiff-deceased Pooran Chand, in the year 1965-1966 when he was sick and on long leave from his service and was in need of money, let out the suit premises to the petitioner-State Bank of Bikaner and Jaipur, on 5.5.1966, on monthly rent of Rs 500/-. After ten years from letting out the premises, in the year 1976, on 24 July 1976, he filed the present suit against the defendant-petitioner, for eviction and for fixation of standard rent. On 29th Sept 1984,during the pendency of the suit, the original plaintiff Pooran Chand expired and his legal representative-respondent no.1 was taken on record by the order of this Court dated 8.7.1988 passed in S.B.Civil Revision Petition No.691/1987.

4. During the pendency of the suit, the defendant submitted an application before the trial court on 10.1.2001 and stated that the defendant-petitioner has vacated the suit premises and has shifted their business to new building, therefore, the defendant wants to hand over the possession of the suit premises to the plaintiff, the legal representative of the deceased plaintiff. The defendant also surrendered the key of the lock of the premises before the court with a prayer that the possession of the suit premises may be delivered to the legal representative of the deceased plaintiff. On 22.1.2001, the defendant-petitioner

submitted another application and informed the court that the defendant-petitioner vacated the remaining apartments of the rented premises also; therefore, the possession of the entire premises may be handed over to the legal representative of the deceased plaintiff. The defendant-petitioner further submitted that they paid the electricity charges and they will pay the remaining amount of the electricity charges, if found due, to the plaintiff. In response to above application, the plaintiff, submitted an application before the trial court stating that he is ready to take possession of the rented premises. Upon non-petitioner-plaintiff's application, the trial court, in presence of the advocate for the defendant-petitioner, handed over the keys of the premises to the petitioner bank's representative who handed over possession of the premises to the plaintiff-respondent no.1, Legal Representative of deceased plaintiff, on the same day. Since, the possession of the premises was handed over by the defendant-tenant-petitioner to respondent-no.1-plaintiff, therefore, the suit before the trial court remained only for determination of the standard rent of the premises in question.

5. .Above facts are relevant because of the reason that after sixteen years from the order of the High Court dated. 8.7.1988, of taking on record the legal representatives of the deceased plaintiff and after handing over possession of the rented premises voluntarily, to the respondent no.1-legal representative of original plaintiff and who is admittedly, born son of the original plaintiff, the petitioner-defendant is seeking review of the order dated 8.7.1988 of this court, that too, under the powers of the High Court to review the orders *suo motu* and also challenging the title of the respondent no.1 to the premises in question.

6. The learned counsel for the petitioner vehemently submitted that, the deceased plaintiff in his plaint admitted that he embraced Islam religion in the year 1958 and purchased the property in dispute in the year 1964, i.e. after becoming Mohammedan. According to the learned counsel for the petitioner, the deceased plaintiff after embracing the religion Islam married a Muslim woman and from that Muslim woman the deceased plaintiff had two sons. Therefore, according to learned counsel for the petitioner, the property in dispute, on death of the original plaintiff-Pooran Chand, devolved upon his Mohammedan heir as per the Mohammedan Law and not devolved upon the deceased plaintiff's Hindu heir. In support of his contention, learned counsel for the petitioner relied upon the Mayne's Treatise on Hindu Law and Usage, 14th Edition, published by Bharat Law House New Delhi, 2001, wherein the author has noticed that "Where a Hindu becomes a convert to Mohammedanism, he accepts a new mode of life, which is governed by a law recognised, and enforced, in India. The property which he was possessed of at the time of his conversion, will devolve upon those who were entitled to it at that time, by the Hindu Law, but that the property, which he may subsequently acquire, will devolve according to Mohammedan Law" (from, 2 W Mac N 131, 132; Jowala vs. Dharaun (1866) 10 MIA 511, 537.

7. Finding, insurmountable difficulty created by the order of this Court dated 8.7.1988, whereby the respondents were substituted as party legal representative of original deceased plaintiff despite the petitioner's same objection before this Court, learned counsel for the petitioner submitted that the High Court has ample power to review its own order *suo motu*. The learned counsel for the petitioner emphatically submitted that when error of law is brought to the notice of the High Court, then it is the

duty of the High Court to correct the error being court of record. The learned counsel for the petitioner further submitted that the High Court can review the order passed by it even after such a delay of 16 years and even in the cases where the aggrieved party himself failed to challenge the order in accordance with law and in time. In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court delivered in the case of M.M. Thomas vs. State of Kerala and another ((2000) 1 SCC 666).

8. The learned counsel for the petitioner further submitted that the suit has already abated in the year 1984 when the plaintiff died and his Mohammedan heirs were not brought on record in the suit. The persons impleaded as party are not legal representatives of the deceased and nor they can represent the estate of the deceased. It is further submitted that principle of sufficient representation of estate of deceased by any co-sharer or legal representatives has no application where the deceased-plaintiff was Mohammedan because one successor of Mohammedan cannot represent interest of other Mohammedan heir as there is no unity of title nor they got the property jointly. There is no concept in the Mohammedan Law analogous to the joint Hindu Family; therefore, there cannot be a '*karta'* in Mohammedan family. The learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court delivered in the case of Harihar Prasad Singh and others vs. Balmki Prasad Singh and others (AIR 1975 SC 733). According to learned counsel for the petitioner, the decree under challenge is, therefore, nullity. It is also submitted that any decision given on application under Order 22 Rules 3 and 4 and under Order 22 Rule 5, C.P.C. are not res judicata. The learned counsel for the petitioner relied upon the judgment of the Himachal Prades High Court delivered in the

case of Suraj Mani and another vs. Kirhori Lal (AIR 1976 Himachal Pradesh 74). It is also submitted that the term “legal representative” is wider term and if one is legal representative of deceased plaintiff, still he may not be his successor to the property and the title may not devolve upon that legal representative, therefore, even if it is held that plaintiff respondent no.1 is legal representative of deceased Pooran Chand, still he was not entitled for relief in the suit for himself as he is not successor to the property of the deceased Pooran Chand which deceased Pooran Chand acquired after becoming Mohammedan.

9. According to the learned counsel for the petitioner, the two courts below under wrong assumption of law that effect of the judgment of this court given in the case of Khem Chand vs. State of Rajasthan & anr. (1999 (2) WLC (Raj.) 230), by which the sub-sec. (2) of sec. 6 of the Act of 1950 was declared unconstitutional, is that that provision was never enacted or it was unconstitutional from very beginning and stands removed from statute from the date when it was enacted. In other words, the courts below have committed error of law in holding that the judgment delivered in the case of Khem Chand’s case has retrospective effect. According to the learned counsel for the petitioner, though sub-section (2) of Section 6 of the Act of 1950 was declared unconstitutional and ultra-virus by the Division Bench of this Court but it was declared so, by the judgment dated 30.3.1999, therefore, sub-section (2) of Section 6 of the Act of 1950, was very much a valid law till 30.3.1999. As per provision to sub-clause (b) of sub-section (2) of Section 6, the rent of commercial premises cannot be increased more than 2-1/2 times. Therefore, increase of rent for the premises, for the period prior to 30.3.1999 (the day on which sub-section (2) of Section 6 was declared ultra-virus) is in violation to sub-section

(2) of Section 6 of the Act of 1950.

10. Further, according to the learned counsel for the petitioner, the courts below have fixed the standard rent beyond the criteria as given in Section 6(3) of the Act of 1950. The courts below have taken into consideration the cost of the property which was not relevant for the purpose of determining the standard rent of the premises. Sub-section (3) of Section 6 of the Act of 1950, made the cost of the construction, maintenance and repairs, the relevant factors for determination of the standard rent and according to the learned counsel for the petitioner the cost of construction is not variable factor as the cost of the property. In view of the above, the trial court exceeded its jurisdiction in determining the rent which may result into awarding rent to the landlord even beyond the cost of the property itself (in 25 years in case in hand). Further, the award of interest (@ 6% per annum) was also challenged by the petitioner in the revision petition.

11. The learned counsel for the petitioner obviously because of the limited scope under revision jurisdiction under Section 115 of the Civil Procedure Code and concurrent findings of facts recorded by two courts below rightly did not assail the finding of facts on the ground of insufficiency of the evidence or on the ground of wrong or improper appreciation of evidence so far as finding recorded by the two courts below about prevailing market rate of rent and petitioner's own offer of rent on the basis of "Rs per square feet" for taking the building on rent and about rate of rent on which the properties were either let out to the banks or offered to the banks including, to the petitioner in the same city. The challenge to the decree so far as fixation of standard rent is concerned, it is on the ground of adopting wrong method of the calculation and which according to

learned counsel for the petitioner was not permissible under sub-section (3) of the Section 6 of the Act of 1950.

12. I considered the submissions of the learned counsel for the petitioner and perused the record.

13. It will be just and proper to consider the submissions of learned consul for the petitioner for review of the order passed by this court dated 8 July, 1988. The question arises for consideration is (1) whether the order passed by this Court, on 8th July 1988 by which the respondents were impeded as legal representatives of the deceased-original-plaintiff in the suit can be, and required or deserves to be reviewed after almost 16 years?

14. It will be worthwhile to mention first, that the petitioner has not sought review of the said order in his revision petition and there is no such prayer in revision petition. It was only during course of arguments that review of order of this Court has been sought. The prayer for review of the order dated 8.7.1988 deserves to be rejected summarily because of more than one reason. Firstly, power of High Court to review is not available to help the grossly negligent persons who did not challenge the order in time as there is no explanation of the petitioner for his not filling review petition before this court for last sixteen years. Secondly, this Court has held in order dated 8 July 1988, that the property in dispute is joint Hindu Family property even in the light of the pleading of the persons who are set up as alleged Mohammedan heirs of deceased-plaintiff by the defendant-petitioner. This finding of fact cannot be challenged in review and therefore, in view of finding of fact against the petitioner, legal plea has no application. Thirdly, the

defendant-petitioner accepted the respondent no.1 as their landlord during trial of the suit without reserving their any right and handed over the possession of the suit property to the respondent no.1, son of the original plaintiff and thereby, took benefit of no-liability of the rent from 1.2.2001. Therefore, in view of this fact, now the petitioner-tenant cannot challenge the title of the respondent no.1. The court can take note of this subsequent event. The petitioner tenant without order of any court, voluntarily offered unequivocally admitting in writing before the trial court respondent no.1 as his landlord, handed over possession of the rented premises to the respondent, therefore, the petitioner being tenant of the respondent no.1, cannot challenge the title of the respondent no.1. Fourthly, none of the alleged Mohammedan heirs of the deceased plaintiff came forward despite their knowledge of this litigation, even till now. Notice was served upon the petitioner bank by them in the year 1984 and thereafter no action was taken by them for being impeded as party in the present suit which shows that they are not concerned with the property and by now, since last twenty years (from death of the original plaintiff in the year 1984).

15. Further, in view of the definition of the ' legal representatives' it is not necessary that one should necessarily be heir of the deceased or upon death of plaintiff or defendant as the case may be, title must devolve upon him on death of the party in the suit. As per the definition of ' legal representatives ' given in sub-section (11) of section 2 CPC, any person who inter-meddles with the estate of the deceased is also legal representative of the deceased. The plaintiff-respondent No 1 is admittedly son of deceased Shri Pooran Chand and he fully inter-meddled with the property is fully proved fact from the document available on record of the trial court. Hon'ble Apex Court, in the case of

Custodian of Branches of Banco National Ultramarino vs. Nalini Bainaique reported in 1989 Supp(2) SCC 275 held as under:;-

> "The definition of "Legal Representative" is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as person who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. If there are many heirs, those in possession bona fide, without there being any fraud or collusion, also entitled to represent the estate of the deceased."

16. Apart from above reasons, there is no justification for the objection which was raised initially and which is again raised in arguments in revision before this court by the petitioner. From the pleading which is relied upon by the learned counsel for the petitioner itself it is clear that the original plaintiff was, because of heavy mental pressure, feeling totally insecured at relevant time pleaded facts about his conversion to Muslim. . He had developed feeling of threat to his not only property but even to his life. That all apparent facts pleaded by the original deceased-plaintiff himself were ignored by the petitioner for the reasons best known to them. And more shocking is that petitioner-bank took the plea on the basis of a fact which is fully contradictory to document which has been executed between petitioner bank and the deceased plaintiff and that is the registered lease deed by which the petitioner became tenant of the deceased plaintiff. In the registered lease deed, the deceased plaintiff, in the year 1966 gave his name as Pooran Chand **Sharma** and not as Rustam Khan as claimed to be his name after his conversion. The petitioner's objection at this stage, after 20 years from the time of death of the original petitioner and after about 16 years from this court's

holding that the property in dispute is joint Hindu Family property of the respondent no.1 and without raising any objection about the respondent no.1's right to succeed to the property in written statement after respondent was impleaded as plaintiff in the suit, if petitioner tenant wanted to challenge the title of the respondents to the property and despite having knowledge of voluminous trustworthy documentary evidence placed on record by the respondent No.1 and knowing well that even any admission of deceased Pooran Chand, which apparently, made unnecessarily in the plaint and apparently not voluntary, about his conversion to Muslim and which is not binding upon the respondent no.1 and his family members, without raising ground in memo of first appeal, is nothing but an unsuccessful effort to abuse a person by taking totally undue advantage of his position as tenant who is not to loose even possession of the property which he is occupying as tenant of respondent no.1's father. It will be worthwhile to mention here that the respondent No. 1 after being impeded as party in the suit submitted an application under Order 6 Rule 16 CPC and sought deletion of Para No 10 of the plaint as the pleading in Para No. 10 about original plaintiff's embracing the Islam etc. were unnecessary pleadings. The application was allowed by the trial court after hearing the petitioner vide order dated 30th Nov., 1991. The trial court held that in suit for eviction against a tenant by the landlord, the pleading in Para No. 10 of the plaint is unnecessary pleadings. The petitioner could look into pleadings which were deleted about 12 years ago by the order of the court but could not look the order deleting para No.10 of the plaint. This order dated 30th Nov, 1991 was never challenged by the petitioner either by filing revision petition or in appeal against the decree passed by the trial court and even had not been challenged in this revision petition. Therefore, the alleged admission of the deceased plaintiff is not available on the record. It casts a serious doubt whether

petitioner raised this objection as desperate effort to save their money or to serve some one else purpose which may have crop up after the dismissal of the petitioner's first appeal because after High Court's order dated 8.7.1988 and upto the decision of the appeal of the petitioner by the first appellate court, this objection was not raised.

17 This Court constrained to observed that the petitioner's objection referred above, at this stage may be due to the fact that the petitioner felt secured after delivery of possession of the property to the respondent no.1 as by questioning the title of the petitioner to the property he is not going to suffer in any manner. The petitioner will not expose to any liability on the ground of denial of title of his landlord because the petitioner has already surrendered the possession of the property to the respondent no.1 voluntarily. Otherwise there was no reason for the petitioner to not to take the plea in the written statement by amending the written statement upon respondent no.1's being impleaded as the plaintiff in the suit as legal representative of the deceased Pooran Chand that even if respondent is legal representative of deceased plaintiff even then he is not entitled to decree for possession for himself as property has not devolved upon him which may have exposed the petitioner to the decree for eviction against him on account of denial of title upon finding that the challenge to the title of the respondent no.1 was not bonafide. It will be relevant to mention here that learned counsel for the petitioner has with all force submitted that the property has not devolved upon the respondents and, therefore, respondents are not owner of the property, therefore, the decree is illegal.

18. This Court further can take judicial notice of the abuse of the process of the court by the litigants by taking advantage of their position in cases where the plaintiff died

after institution of the suit. In such unfortunate happening the defendant-tenant can raise all sorts of objections against impleading the legal representatives of the deceased plaintiff. In many cases the trial court also failed to notice the scope of the enquiry under Order 22 Rule 5, C.P.C. and some times converted the miscellaneous proceeding of holding an enquiry to determine the question of "legal representative" of deceased plaintiff or deceased defendant to an enquiry for deciding the "title of the suit property". The legislature purposefully used the words "legal representative" in Order 22 C.P.C. and avoided to use narrower words "heir, successor, executor or administrator or title holder." This has been done so that the courts may not misdirect themselves from deciding the controversy involved in the suit and proceed to decide the altogether new issue which may not have any relevance with the main controversy involved in the suit. The case between landlords and tenants are among their cases where the question of title cannot be subject matter, more particularly where tenancy is admitted or proved one. If complete enquiry about title to the property of the plaintiff is allowed then the scope of the enquiry in proceedings under Order 22 Rule 5,C.P.C. will be more wider than in main suit itself and it will change the nature of the suit itself. Rule 5 of Order 22, C.P.C. is not provision meant basically for deciding rival claims even between the heirs and legal representatives. The court may in case of rival claims by the applicants, either implead all those claimants in the suit or may choose any of them who may be found appropriate to be impleaded as party in the suit, only for the purpose to continue the suit after the death of the party treating that newly added party as original party or deeming that original party has not died. The court may leave the issue of title and heir-ship to be decided in appropriate suit or proceeding. Between the paraties concerned only leaving the other (like tenants) out.

19. It is true that the defendant may say that he is not liable to a person who is not legal representative of the deceased and no unconcerned person can seek decree against him by becoming party in the suit in case death of the plaintiff during trial. That right of the defendant is limited right only in view of Rule 1 of Order 22, C.P.C. which says that only due to the death of plaintiff or defendant, the suit shall not abate if the right to sue survives. Therefore, where right to sue survives, then the dispute may only be of a limited nature and, therefore, in Rule 3 and 4 of Order 22, C.P.C. it has been provided that the suit can be continued by the legal representatives of the deceased. By this, the defendant's rights are fully protected and he cannot suffer any prejudice because of passing of decree for the benefit of original plaintiff on continuation of the suit by the “legal representative of the deceased plaintiff”. The defendant has right only to destroy the case of the original plaintiff irrespective of the fact that the original plaintiff survives or not, during the entire proceeding of the litigation initiated by the plaintiff. In view of the above, limited scope of enquiry under Rule 5 of Order 22, C.P.C., once the court has decided that the applicants are the legal representatives of the deceased having either title or they are falling in any of the categories which makes them legal representatives of the deceased, they can represent the estate of the deceased, then at the instance of the defendant, the order of taking on record legal representatives of the deceased-plaintiff normally cannot be disturbed by the appellate court so as to nullify the entire trial of the suit. The benefit arising out of the decision of the suit can be enjoyed by the legal representatives of the deceased and the person who is claiming his right to the benefit flowing from the decree, can get the benefit from the decree holder in accordance with law after determination of his legal right, title and interest in the property, in which defendant may not have any

concern. It applies more rigorously when defendant is tenant of the original plaintiff, admitted or proved.

20. Here in this case, by order of this Court dated 8.7.88, the question of legal representatives of the deceased was determined by the court and the trial was completed after impleading the respondents as party in the suit. The entire trial and the proceedings taken in the appellate court without there being any objection of the defendant-tenant-petitioner. The complete exercise done by the courts for 20 years cannot be undone in limited jurisdiction of review that too at the instance of person who is tenant. It will be worthwhile to mention here that even if the order dated 8.7.1988 of this Court is reviewed and set aside and even if the order of the trial court passed on application under Order 22 Rule 4 C.P.C. is restored, even then the suit cannot be dismissed because by this, only the order of the trial court will revive which only provides that claim of the respondents can be decided after hearing alleged other heirs of the deceased. Notice to unwilling person who have even not claimed rent of the premises since last 20 years that too at this late stage when the petitioner surrendered the property to respondent no.1 voluntarily and those persons have not objected for so many years, cannot be justified by any stretch of imagination and no purpose would be served.

21. Therefore, the request of the petitioner for review of the order dated 8 July, 1988 deserves to be rejected, hence rejected.

22. On merits, it will be useful to look Section 6 of the Rajasthan Premises (control of rent and eviction) Act, 1950 which is as under:-

6. Fixation of standard rent- (1) Where no rent has been agreed upon **or** where for any reason the rent agreed upon is claimed to be (low or) excessive, the landlord or the tenant may institute a suit in the lowest Court of competent jurisdiction for fixation of standard rent for any premises.

(2) The Court shall, after holding such summary inquiry as it may consider just and necessary, determine the standard rent for such premises and shall, in doing so, act according to the following principles, namely-

(a) Where the premises are let for residential purpose or for the purpose of the public hospital, aushadhalaya or dawakhana, a recognised educational institution, a public library or reading room or any orphanage the standard rent shall not exceed the basic increased by fifty per cent thereof; and

(b) Where the premises are let for any other purpose, the standard rent shall not exceed two and a half time the basic rent thereof:

Provided that where the premises have been (first) let after the first day of January, (1965) the standard rent shall not exceed the basic rent thereof;

Provided further that where the fair rent or standard rent for any premises has been determined or redetermined (by any Court under this Act or) by any authority under any law or order repealed by Sec.30 before the commencement of the Rajasthan Premises (Control of Rent and Eviction Amendment) Ordinance, 1975 and the amount of such fair rent or standard rent is the same as would be determinable as standard rent by the Court under This Section, the fair rent or standard rent previously determined or redetermined, shall not be disturbed.

Explanation- For the purpose of this sub-section, the basic rent of any premises shall mean the rent at which the premises were let on the first day of January, (1962) and, if not let on that day, the rent at which they were first let after that day.

(3) Where for any reason it is not possible to determine the standard rent of any premises on the principles set out in sub-sec.(2), the Court shall determine such rent, having due regard to the prevailing rent or standard rent for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitary fittings, and the like) attached to the premises, the cost of construction maintenance and repairs thereof, the special reason, if any; proved by the plaintiff and other relevant considerations.

> (4) In fixing the standard rent for any premises under this Section, the Court shall determine such rent in respect of the premises in an unfurnished state but may also determine additional charge to be payable on account of fittings or furnishing and it shall be lawful for the landlord to recover such additional charge from the tenant.
>
> (5) In every case in which the court determines the standard rent of any premises under this Section it shall appoint a date from which the standard rent so determined shall be deemed to have effect.
>
> (Provided that such date shall in the case of a tenant who institutes a suit under this Section after the expiration of six months from the commencement of his tenancy on the ground of the rent agreed upon being excessive, be the date of the institution of such suit or such later date as the Court in the circumstances of the case deem reasonable."

23. As per sub-section (1) of Section 6, the suit can be filed for fixation of standard rent in both the conditions; (1) where no rent has been agreed upon between the parties and (2) where the rent agreed upon is claimed to be low or excessive. In first contingency, since there is no agreed rent, therefore, the landlord or the tenant need not to claim that "the rent is excessive or low", as the case may be. They can seek relief from the court for fixation of the standard rent and the court determines the standard rent of the premises by following the procedure as provided under sub-sections (3), (4) and (5) of Section 6. In the second contingency, though the premises are let out on agreed rent but the rent is being claimed low or excessive then the court determines the standard rent for the premises. Sub-section (2) of section 6 provides restrictions over increase of rent beyond; by 50% of the basic rent, if the premises are let out for residential purpose or for the purposes mentioned in clause (a) of sub-section (2), and by 2- 1/2 times of the basic rent, if the premises has been let out for any other purpose as mentioned in clause (b) of sub-section (2). Second proviso to the sub-section (2) has put a restriction against the re-determination of the standard rent in case where the court has determined the standard

rent once.

24. The effect of sub-section (2) of the Section 6 of the Act 1950 had ultimate effect of making the rent static. One, by providing provision against any increase of rent in all cases and for all times to come if the premises has been let out after a cut-off date irrespective of the fact that the market has gone up by several times or cost of maintenance of the buildings itself has gone up several times. Second, if premises has been let out prior to cut-out date, the landlord had only one opportunity of getting increase of rent, that too, to the extent of limitations fixed by the clauses (a) and (b) of sub-section (2) and that increase may not even up to the extent of prevailing market rate of rent for the premises. By virtue of proviso, appended to sub-section (2) of sec.6, if the landlord availed that opportunity of getting increase of rent for a particular premises once and rent is determined by the court for the premises then if in future there is manifold increase in the market rate of rent or increase in living cost or increase in building maintenance cost, even then the landlord cannot seek further increase of rent for that premises for which he obtained decree for fixation of the standard rent. Further, in view of Section 8, the landlord cannot get more rent than the standard rent even by mutual agreement. *Therefore, the rents of the all premises let out were made static by sub-section (2) of section 6 of the Act of 1950, irrespective of status and financial position of the landlords and the tenants. The tenants, irrespective of their status and financial position, were taken as weaker section and therefore, it was presumed that they may be exploited by the deemed stronger and rich landlords*. Be it as it may be, even tenant's who were not financially sound at the time of their entry as tenant in the landlord's building, in time, they became more sound than their landlords (obviously, by doing

business in the rented premises). This fact was noticed by the Hon'ble Supreme Court in the case of Inder Mohanlal vs. Ramesh Khanna, (1987(4) SCC 1) which is as under:-

> "By lapse of time the tenants (at least many of them) doing business in commercial buildings taken on rent are far more affluent financially than the owners of the building in which they do business."

25. Above decision of the Supreme Court was considered by the Division Bench of this court in the case of the Khem Chand (supra) by which the entire sub-sec. (2) of Section 6 of the Act of 1950 was declared unconstitutional. If some of tenants became affluent doing business in rented buildings, some were even more affluent when they took the premises on rent. They took the premises on rent by their choice and not because of any compulsion for them to take on rent the premises. Some of the tenants took building on rent so that those affluent tenants may utilise their own money and even their own buildings for better return. They opted to take building on rent instead of purchasing the buildings for their businesses. In Rajasthan Rent Act, acquisition of another suitable commercial accommodation by the tenant is not a ground available to the landlord for seeking eviction decree against the tenant though acquiring a suitable residential accommodation by the tenant in residential purpose is ground for his eviction. In State of Rajasthan, those affluent tenants from beginning and who took the premises on whatever rent, were also given benefit of rent ceiling which was meant for the weaker section of the society. The Division Bench of this court in Khem Chand's case (supra) before declaring the sub-section (2) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 as ultra virus and unconstitutional, considered decisions of Supreme Court on both the aspects; one, *comparative position of the tenant and landlord* (Inder Mohan Lal's case,(*supra*) and another, *freezing of the rent for long time ignoring the enormous*

multifold increase of rents throughout the country, (Ratan Arya vs. State of Tamil Nadu (AIR 1986 SC 1444). Therefore, it will not be correct to say that the sub-sec. (2) of the Act of 1950 was declared ultra virus and unconstitutional in Khem Chand's case merely on the ground that the constitutionality of restriction against increase of the rent imposed by the sub-sec. (2) of Sec.6 has become worn out by passing of time and though it was one of the reasons only and not the only reason for striking down the said provision.

26. Apart from the reasons mentioned above, the reason for declaring the sub-sec. (2) of Sec. 6 as unconstitutional was not only that it made the rents unrealistic because of passing of some time. Clauses (a) and (b) of sub-sec.6 Sub-sec. (2) provided ceiling for the rents but second proviso to sub-sec. (2) made the rent static. Therefore, the second proviso to sub-sec. (2) was declared unconstitutional by the Division Bench of this Court, not inadvertently but it was after taking note of the reasons given by the Division Bench of Kerala High Court given in the case of Issac Ninan Vs. State of Kerala (1996 AIHC 857), which are :-

> "**The intention in bringing legislation like the Act was to regulate the lease of building and to control the rent, and not to make the rent static." (Emphasis supplied)**

27. As per sub-sec. (5) of sec. 6, the court is required to appoint a date, a date from which the standard rent shall have effect. Without help of second proviso to sub-sec. (2), sub-sec (5) cannot be read as providing one time fixation of standard rent. Use of the words "…it (court) shall appoint a date from which the standard rent so determined shall be deemed to have effect," cannot be read as "a date" and "a standard rent" for a premises. Provision provides specifically for fixing "a starting date" for standard rent

and not that it shall be for ever. After deletion of sub-sec. (2) of Sec.6, restriction against disturbing the standard rent stands removed. If the argument of learned counsel for the petitioner, that court can fix standard rent for a premises only once is accepted then it will be enforcing again the second proviso to sub-sec.(2) of the Sec.6 of the Act of the 1950 which has been declared unconstitutional by this court in Khem Chand's case. If the interpretation as advanced is accepted then the rent for premises will again be static and will not have any relation with any "*enormous and multifold increase of rents throughout the country"*.

28. According to learned a consul for the petitioner, there is only one provision in the Act and that is Section 10 which allows increase in standard rent. Therefore, when procedure has being provided for increasing the standard rent in the Act itself then the standard rent once determined by the court can be increased only in accordance with the said provision of Section 10 and not otherwise. Hence, once standard rent is fixed for the premises by the court, it can be altered or disturbed when increase is sought within the parameters provided under Section 10. The argument advanced by the learned counsel for the petitioner is devoid of any force. Heading of Section 10 though is "Circumstances under which the standard rent is liable to increase-" but the section is not providing for increase *in* standard rent. The sub-section (1) Section 10 is the provision made for allowing *return of income on expenditure* incurred by the landlord on any improvement of structural alteration of the premises, not being expenditure on decoration, the maintenance or normal repairs and *which has not been taken into account in determining the standard rent of the premises.* For this expenditure, Section 10 permits increase in rent up to seven and half percent per annum of such expenditure. This increase can be

claimed by the landlord without seeking any determination of standard rent. It is independent to any standard rent of the premises. Sub-section (2) of Section 10 also provides that the landlord or the tenant in chief, as the case may be, may claim increase in the rent when part of the premises has been sublet by the tenant. The section 10 provides only very specific contingencies in which not only the landlord can demand amount more than standard rent but the landlord can demand in addition to rent itself. Whereas sub-section (3) of the Section 6 provides for fixing the standard rent having regard to the prevailing rent for similar premises in the same locality. The landlord has incurred expenditure on any improvement on structural alteration of the premises, is not a consideration for determination of standard rent under Section 6 of the Act of 1950. Therefore, the Section 10 deals with an entirely separate matter and is not a provision providing for permitting any addition or alteration *in* the standard rent. The language of the Section 10 has been drafted, to keep any amount allowed to the landlord under Section 10 as a separate component from the rent and the standard rent of the rented premises. Therefore, it will not be correct to say that section 10 is a provision by which the rent or the standard rent can be increased because it nowhere permits disturbance of rent or standard rent itself though by virtue of Section 10 the landlord can get a separate and distinct amount from the tenant but the amount is not part of the rent or standard rent. If Section 10 is read as allowing disturbance in the standard rent then it would have been contrary to the second proviso to sub-section (2) of the section 6 which unambiguously restricted disturbance of standard rent. Hence, there is no restriction against fixing the different standard rent of the premises for different periods.

29. It will be worthwhile to mention here that in the State of Rajasthan new Rent Act

has been enacted which permits annual increment of the rent for the premises. Therefore, legislature itself after the decision of the Division Bench of this Court accepted that the landlords should get even annual increment in the rent. Whereas in present case, the trial court and the appellate court, allowed increment of rent on completion of five years only. The Hon'ble Apex Court noticed the hardship created by the State Rent Act in the year 1986 in the case of Ratan Arya v. State of Tamil Nadu (AIR 1986 SC 1444). The Hon'ble Apex Court observed:-

> We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could has possible got for Rs.400/- per month in 1973 will today cost at least five times more. In these days of universal day today escalation of rentals may ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today."

30. Above reasons give answer to the contention of the learned counsel for the petitioner. Declaration of second proviso to sub-sec.(2) of Section 6 of the Act of 1950, as unconstitutional is to allow the landlord to get the rent for the premises with periodical increment of the rent for a premises. Second proviso to sub-section (2) of Section 6 was enacted to put restriction against re-determination of standard rent and to prevent court from disturbing the standard rent of the premises and it was declared unconstitutional to remove this bar only and not for any other purpose. Therefore, only effect of removal of bar is to permit periodical increment in rent and standard rents only.

31. In Ganpat Ram vs. Gayatri Devi (AIR 1987 SC 2016), the Hon'ble Supreme Court held that the Rent Act is a beneficial legislation, beneficial to both the landlord and tenant. It protects the tenant against unreasonable eviction and exorbitant rent. The State

Rent Act protects the tenants from demand of *exorbitant high rent* which may be demanded by the landlords by taking undue advantage of the situation created by some extra ordinary reasons like; war, the migration of population in the country or in a state or economic changes, sudden increase in demand of premises on rent or shortfall in availability of the premises on rent etc. It appears while enacting the provisions imposing ceiling for rent and making it static, the situation was not taken into account where the landlord because of his own financial weakness let out the premises to the affluent tenant or where the premises was let out to an affluent tenant by a landlord who could not withstand the offer of the rent for his premises due to his financial or other weakness and let out the premises. Ignoring all not only those aspects but the very many other aspects, the benefit which was meant for the weaker section of the society was provided to those who could not have been treated as financially or otherwise weak or oppressed or were the persons who could have been exploited by the deemed mighty Landlords. The law was made applicable to all the tenancies irrespective of fact that whether the tenant is private person or a firm or a company or a Corporation or it is the government.

32. In revision jurisdiction, this Court is not examining the constitutional validity of sub-section (2) of Section 6 nor it is needed because the Section has already been declared unconstitutional by the Division Bench. The petitioner sought to find out effect of the judgment of this Court declaring the said provision as unconstitutional. It will be worthwhile to mention here that prior to Khem Chand's case(supra) the learned single Judge of this Court in Firm Khetsi Das Sheoji Ram vs. Mohini Devi (1994(2) RLW 635) already declared sub-section (2) of Section 6 of the Act of 1950 to be ultra-virus to the

Constitution and the Single Bench of this Court in S.B.Civil Revision Petition No.986/1996 referred the matter to the larger bench of the High Court, for deciding the questions whether the learned Single Judge could have declared the provisions of enactment to be ultra-virus to the Constitution while exercising revisional jurisdiction and when provision of sub-section (2) of Section 6 of the Act of 1950 can be taken to have been impliedly declared ultra-virus as necessary effect of the decision of the Supreme Court in Malpe Vishwanath Acharya (supra) and other cases relied upon in the case of the Firm Khetsi Das Sheojiram(supra). The Division Bench, therefore, followed the decision of Hon'ble Supreme Court and declared the sub-section (2) of the section 6 is ultra virus and unconstitutional. The reasons given in the Division Bench judgment of this Court in the Khem Chand's case nowhere suggest that the Division Bench has held that ***Now*** sub-section *(2) of Section 6 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 has become arbitrary, unreasonable and unconstitutional and stands worn out only in the year 1999 and was valid before the year 1999 or determined the period on which the said provision became arbitrary, unreasonable and unconstitutional. Rather, the judgment suggests that Division Bench followed the earlier decisions of the Supreme Court delivered as back as in the year 1986; 13 years ago (AIR 1986 SC 1444). Therefore, in view of the reasons mentioned above there is no reason to deny the benefit which accrued to the landlords on declaring the sub-section (2) of Sec.6 the Act of 1950 as unconstitutional, in pending cases.*

33. The validity of similar provisions made in other State Rent Acts were considered by the Hon'ble Supreme Court, almost decades ago, in various cases referred above and Hon'ble Supreme Court and other courts found them highly unreasonable, artificial and

Hon'ble Supreme Court, in Malpe Vishwanath Acharya vs. State of Maharashtra(AIR 1998 SC 692) held that the decision of the Bombay High Court up-holding the validity of the impugned provisions relating to standard rent was not correct.

34. Since Division Bench of this court in Khem Chand's felt satisfied that the sub-sec. (2) is unconstitutional in the light of the reasons given in the judgment referred in the judgment, then it will not be fair that any one reason out of many may be picked up and say that only because of that reason the provision was declared unconstitutional. Even the validity of the said provision, if had not been challenged on other ground because, it was either not needed in the facts of the case or the court found not fit to consider other grounds at that time or even if the learned counsel could not perceive and set up provision's invalidity on other grounds cannot make the provision valid on all other grounds except on the ground on which it was declared unconstitutional. It will be useful to refer what Hon'ble Supreme Court in the case of Motor General Traders (supra) has observed where validity of a provision of the Rent Act remained in force for 23 years and thereafter, its validity was challenged. Hon'ble Supreme Court approved the reasons given in W.A. Wynes: 'Legislative, Executive and Judicial Powers in Australia', Fifth Edition, p33, which is:-

> "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyer to perceive and set up its invalidity"

35. Above reason helps court in finding out whether it was the only "time" which made the sub-sec.(2) of the Sec. (6) unconstitutional or it was "time" which gave, a 'so apparent reason' to declare the provision unconstitutional which became veil over other

reasons and grounds which would have specific reason for declaring the provision unconstitutional from the beginning. And one of the reason may be, arbitrary application of the rent ceiling of rents to be applied upon all categories of tenants and all categories of the landlords ignoring who can exploit whom.

36. Apart from above, normally it is not possible to work out and fix when the law which was valid and not unconstitutional, has become unconstitutional by passing of the time and at what exact point of time, it became discriminatory. Therefore, benefit arising out from the Khem Chand's case can be given in all those cases which were pending at the time of decision in Khem Chand's case, that is to the cases which were pending on 30.09.1999. I do not find any force in the submission of the learned counsel for the petitioner that any order or decree fixing the standard rent for the period prior to 30.3.1999 shall be violative to the restriction imposed by sub-section (2) of Section 6 of the Act of 1950.

37. Facts of this case also fully justify the relief granted to the petitioner. What has been done by the courts below in the present case is that the Court below increased the rent of the premises from Rs. 500/-(rent in the year 1966) to Rs. 2,500/- per month from 31st May 1976. Hon'ble Supreme Court in the case of the Ratan Arya (supra) observed: "it is common knowledge today that the accommodation which one could has possibly got for Rs 400/-per month in 1973 will today cost at least five times more." The courts below allowed increase of rent not annually but increase after every five years on the basis of per square feet rent, the method which is being adopted by the banks for taking the buildings on rent which is clear from the evidence produced by both the parties. The

courts below found that other banks as well as even the defendant bank itself offered more rent for the buildings, not only in the same locality but for the buildings which are situated just near to the premises in question. Hon'ble the Supreme Court, in the case of Inder Mohanlal (supra) held that "by lapse of time, the tenant doing business in commercial building taken on rent are far more affluent financially" then it may be observed without hesitation that the petitioner-tenant was far more affluent financially than the owner of the building in this case who was in service person only and let out the premises to the so deemed member of weaker section (State Bank of Bikaner and Jaipur) in dire need of money. Even in the plaint itself, as back as in the year 1976, the plaintiff painfully pleaded in para no.3 that in the year 1965 he was on long leave due to his sickness and he was in dire need of money, therefore, he let out the premises to the defendant-tenant on rent of Rs.500/- per month and because of the restriction imposed by the statutory provision which was in force at that time, he could not have filed the suit for increase of rent for seven years and, therefore, he could demand the increase of rent by notice only on 24.1.1973. He further pleaded that after letting out the property to the petitioner-tenant, he resigned from service and he could not do the business successfully, therefore, he got himself enrolled as an Advocate.

38. The two courts below relied upon the oral as well as documentary evidence produced by the plaintiff and also considered the valuation report of the property proved by P.W.5 Keshri Mittal. The two court below also considered the prevailing rent for the similar premises and not only this but even the defendant-petitioner itself took another premises on rent at the rate of Rs.5.80 per sq.ft. The witness of the petitioner D.W.1 admitted in his statement that the petitioner-Bank invited tenders for taking on rent the

premises for their use and the petitioner-Bank received offer of letting out the building to the petitioner on monthly rent of minimum Rs.2.50 per sq.ft. and to maximum Rs.3.75 per sq.ft. in the year 1987 with increase in rent after five years. One building was let out to Allahabad Bank in the year 1995 on rent of Rs.7 per sq.ft. vide Ex.1 The trial court as well as the appellate court also considered the evidence produced by the plaintiff regarding valuation of the property at the relevant time and after taking into consideration all the evidence, determined the rent, as mentioned above.

39. Therefore, so far as rent is concerned, the building could have fetched the rent at relevant time as decreed by the courts below. In view of this even if rent on valuation basis is ignored even then enhancement of rent on the basis of prevailing rate of rent is in accordance with the procedure provided in the sub-sec.(3) of the sec. 6 and therefore, there is no illegality in the judgment and decree passed in this case.

40. Learned consul for the petitioner also submitted that the trial court committed illegality in awarding interest over the standard rent. It is clear from the plaint itself that the plaintiff claimed for the interest at the rate of 6 percent per annum on standard rent. During argument before the trial court it was submitted on behalf of the plaintiff that the interest at the rate of 18 percent per annum with compound interest may be awarded as the defendant bank itself is charging the interest at the rate. The trial court considered this argument of the plaintiff but allowed interest at the rate of 6 percent per annum only. It appears from the judgment of the trial court that the defendant-petitioner did not oppose the claim of interest so far as it is for 6 percent per annum. The petitioner defendant did not challenge the award of interest to the plaintiff on standard rent before

first appellate court. Contrary to it, the respondent No 1 submitted cross objections and sought compound interest on the standard rent, at the rate of 18 percent per annum. The appellate court by the reasoned order held that the interest at the rate of 6 percent per annum is just and proper and interest at the rate of 6 percent per annum was awarded to the plaintiff. In view of the facts the petitioner cannot be permitted to challenge the award of interest, that too only @ 6% per annum, for the firstime in the revision.

41. In view of the above reasons there is no merit in the revision petition hence dismissed.

(**PRAKASH TATIA),J**.

mlt.